IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 716 OF 2005

Nathubhai Naranjibhai Patel .. Appellant

Vs.

Shantilal Naranjibhai Patel and anr. .. Respondents

Mr. V.A. Thorat with Mr. Bipin Joshi for Appellant.
Mr. Lalit V. Jain for Respondents.

CORAM: B.H. MARLAPALLE, J.

Date : August 02, 2005.

P.C.:

1. Heard Mr. Thorat, the learned senior counsel, with Mr. Joshi for the appellant-plaintiff and Mr. Jain, the learned counsel for the respondents-defendants.

2. The appellant filed S.C. Suit No.1550 of 2005 and in the same moved a Notice of Motion which came to be registered as Notice of Motion No.1435 of 2005. By the impugned order the said Notice of Motion has been dismissed. However, the learned Judge of the Trial Court has proceeded further to grant relief in favour of the defendants and only that portion of the

impugned order has been assailed by this appeal.

3. The plaintiff and defendant no.1 are real brothers and the common suit property came to be demarcated on the basis of two agreements dated 7-4-1987 and 29-6-1990 for partition and usage of the common property and as per the plans annexed to the said agreements separately. Prayer clause (a) in the Notice of Motion No.1435 of 2005 reads as under:-

> (a) That pending the hearing and final disposal of this suit, this Hon'ble Court be pleased to issue a temporary order and injunction restraining the Defendants by themselves, their servants, agents and representatives from entering upon the property and portions of the suit premises coming to the exclusive share of the Plaintiff more particularly shown on the plans numbered 1, 2, 3 and 4 attached to the said Agreement dated 7th April 1987, Exhibit B to the Plaint, in any manner whatsoever and from breaking up the wall, putting doors or making any additions or alterations thereto in any manner whatsoever."

4. Having heard Mr. Thorat, the learned senior counsel for the appellant, there is no reason to interfere with the impugned order to the extent of rejecting the Notice of Motion No.1435 of 2005.

5. Once the Notice of Motion was dismissed by the trial court, it was required to stop there itself rather than proceeding further to grant the reliefs to the defendant. If the defendant is exercising his rights based on the agreements, the temporary injunction against such action was disallowed but that does not mean that the defendant would be entitled for relief in the plaintiff’s suit and that to without taking out any motion.

6. Under such circumstances, the appeal is disposed off by confirming the order of rejection of prayer clause (a) in the Notice of Motion No.1435 of 2005 and the operative part of the said order would read as under whereas the remaining portion stands deleted:-

> "The plaintiff is not entitled to the injunction sought in prayer (a) of the suit. Prayer (a) is rejected."

(B.H. Marlapalle,J.)